

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, ET AL.

Plaintiffs,

v.

UNITED STATES OF AMERICA, ET AL.

Defendants.

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Civil Action No. 1:14-cv-254

MOTION TO STAY MERITS PROCEEDINGS

The Plaintiff States move to continue the stay of proceedings on the merits of the claims until September 5, 2017 to allow the parties additional time to attempt to resolve this matter without further litigation. The Defendants are unopposed to this requested relief; the Intervenor is opposed. The basis for this Motion is as follows:

Background

1. On December 3, 2014, the Plaintiff States filed this lawsuit to immediately halt the implementation of the DAPA and Expanded DACA programs.
2. On February 16, 2015, this Court granted the requested relief and issued a preliminary injunction of DAPA and Expanded DACA. ECF Nos. 144, 145.
3. The Defendants appealed from this Court's preliminary injunction. The Fifth Circuit affirmed, finding that the Plaintiff States had standing and that the Plaintiff States satisfied the equitable requirements for a preliminary injunction. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam).

4. The Supreme Court of the United States subsequently affirmed, by an equally divided Court. 136 S. Ct. 2271 (2016) (per curiam).

5. On July 18, 2016, the Defendants filed a petition for rehearing in the Supreme Court. The parties subsequently agreed to continue the stay of this Court's merits proceedings until the Supreme Court ruled on the petition for rehearing.

6. On October 3, 2016, the Supreme Court denied the Defendants' petition for rehearing.

7. On October 6, 2016, this Court ordered the parties to propose a scheduling order by November 11, 2016. ECF No. 422.

8. On November 18, 2016, the parties filed a joint motion to stay the merits proceedings until February 20, 2017, to allow for the new Presidential Administration to consider its position in this litigation. ECF No. 430.

9. On January 19, 2017, this Court issued an order extending the stay of merits proceedings until March 17, 2017. In that Order, the Court noted that it would "consider an additional stay if good cause exists and if agreed to by all the parties." ECF No. 435.

10. On February 20, 2017, the Secretary of Homeland Security issued a memorandum providing new guidance on immigration enforcement priorities. *See* Enforcement of the Immigration Laws to Serve the National Interest, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf. The memorandum rescinded previous guidance on immigration enforcement priorities, but left DACA,

Expanded DACA, and DAPA in place. *Id.* at 2. DHS Secretary Kelly further stated that DAPA would “be addressed in future guidance.” *Id.* at 2 n.1.

11. On March 17, 2017, the Defendants filed an unopposed motion to extend the stay of merits proceedings until June 15, 2017. ECF No. 438.

12. Finding that the parties had established good cause to continue the stay, this Court granted Defendants’ unopposed motion on March 22, 2017, ordering the parties to file a proposed scheduling order by June 15, 2017. ECF No. 439.

13. On June 15, 2017, DHS Secretary Kelly issued a memorandum rescinding, in large part, the November 2014 memorandum that created the DAPA and Expanded DACA programs. A copy of the June 15, 2017 memorandum is attached hereto as **Exhibit A**.

14. DHS Secretary Kelly’s memorandum provided that “[t]he June 15, 2012 DACA memorandum, however, will remain in effect,” and certain permits issued pursuant to “Expanded DACA” would not be rescinded.

15. On June 29, 2017, the Attorneys General of the States of Texas, Alabama, Arkansas, Idaho, Kansas, Louisiana, Nebraska, South Carolina, Tennessee, and West Virginia, along with the Governor of Idaho, sent a letter to U.S. Attorney General Jeff Sessions, requesting that the Secretary of Homeland Security “reconsider the decision to retain the DACA program.” A copy of the June 29, 2017 letter is attached hereto as **Exhibit B**.

16. The signatories of that June 29, 2017 letter requested that the Secretary of Homeland Security “phase out the DACA program by rescinding the

June 15, 2012 DACA memorandum and ordering that the Executive Branch will not renew or issue any new DACA or Expanded DACA permits in the future.”

17. That June 29, 2017 letter stated that “[i]f, by September 5, 2017, the Executive Branch agrees to rescind the June 15, 2012 DACA memorandum and not to renew or issue any new DACA or Expanded DACA permits in the future,” then the Plaintiff States would voluntarily dismiss this lawsuit. Otherwise, the letter indicated, “the complaint in [this] case will be amended to challenge both the DACA program and the remaining Expanded DACA permits.”

18. In order to allow Defendants time to consider the proposal regarding DACA and Expanded DACA from the June 29, 2017 letter, the Plaintiff States seek to stay all merits proceedings until September 5, 2017.

Argument

19. A district court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997).

20. Here, good cause exists to continue the stay of merits proceedings because the Defendants’ consideration of, and their response to, the June 29, 2017 letter regarding DACA and Expanded DACA will dictate the further arguments of the parties and may affect the extent to which any further litigation will be necessary in this case.

21. If the Defendants agree to rescind the June 15, 2012 DACA memorandum and not to renew or issue any new DACA or Expanded DACA permits

in the future, the Plaintiff States will voluntarily dismiss their complaint under Fed. R. Civ. P. 41.

22. The Defendants are not opposed to a continuation of the stay, but take no position on the Plaintiff States' arguments in support of the stay. Further, the parties agree that, with the filing of this motion, no party has waived any rights or arguments they would otherwise maintain.

Conclusion

The Plaintiff States respectfully request that the Court grant a stay of the proceedings on the merits until September 5, 2017.

Dated: July 7, 2017

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Certificate of Conference

I hereby certify that on July 6, 2017 counsel for the Plaintiff States, the Defendants, and the Intervenorers conferred regarding this motion. Defendants indicated that they were not opposed to the relief requested herein; Intervenorers indicated that they were opposed.

/s/ Adam Arthur Biggs
ADAM ARTHUR BIGGS
Assistant Attorney General

Certificate of Service

I hereby certify that on this 7th day of July, 2017, the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system and served on all attorney(s) and/or parties of record, via the CM/ECF service and/or via electronic mail.

/s/ Adam Arthur Biggs
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